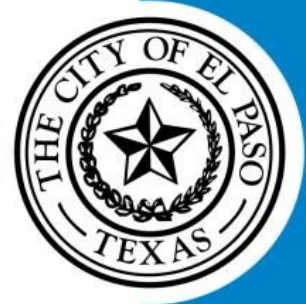




**Consolidated Tax Office
Property Tax Overpayment Account
Review
Project No. P2012-12**

Issued by the
Internal Audit Office
June 26, 2012



TO: William F. Studer, Deputy City Manager

FROM: Edmundo S. Calderon, Chief Internal Auditor

DATE: June 26, 2012

SUBJECT: Consolidated Tax Office – Property Tax Overpayment Account Review

As you requested, a detailed review has been conducted of the City of El Paso's Consolidated Tax Office's Property Tax Overpayment Account. Based on our analysis, we have been able to determine 6 instances of mismanagement of the money contained in the Property Tax Overpayment Account by the City Tax Assessor/Collector and the Deputy Tax Administrator. The 6 instances are as follows:

1. Check Number 030460, dated March 22, 2012, in the amount of \$225,000.00 was written to Madison River Investments, LLC to pay for \$150,000.00 of the construction cost and security equipment connected with the relocation of the Consolidated Tax Office to the Wells Fargo Bank Building. In addition, a Purchasing Agreement was executed by the City Tax Assessor/Collector without City Council or City Management approval. The Purchasing Agreement granted a 4% mark-up fee to be paid to Madison River Investments, LLC.

Upon notification, the City Manager's Office took action to stop the financial transactions initiated by the Tax Assessor/Collector in connection with the relocation of the Consolidated Tax Office. On June 5, 2012, City Council ratified approval of the expenses for the tenant improvements between the City of El Paso and Madison River Investments, LLC for the new Consolidated Tax Office.

2. Another expenditure associated with the \$225,000.00 check paid to Madison River Investments, LLC was a payment of \$75,000.00 for the purchase of furniture. This furniture purchase was completed without following Texas Local Government Code, Title 8, Subtitle A, Chapter 252, Section 252.021; which requires a competitive bidding process.

On June 5, 2012, City Council approved the acquisition for additional furniture and equipment from an approved vendor. By following the proper procurement procedures, the City of El Paso was able to save approximately \$30,000.00 in the purchase price.

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

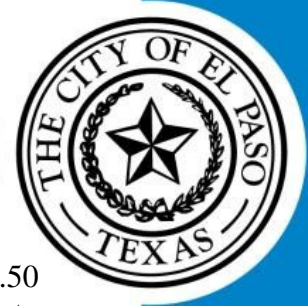
District 5
Dr. Michiel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Cortney Carlisle Niland

City Manager
Joyce A. Wilson



3. For Tax Years 2009-2011, the Consolidated Tax Office paid \$628,515.50 to the Law Firm of Delgado, Acosta, Spencer, Linebarger, and Perez to handle current year bankruptcies. Compliance with City of El Paso Accounts Payable Procedures was not followed in the processing of these payments to the Law Firm. This practice avoided increasing the per parcel operating cost of the Consolidated Tax Office.
4. For Tax Years 2004-2011, \$234,883.69 was paid out of the Property Tax Overpayment Account for accounts with a balance of less than \$10.00. Property Taxes were paid on 123,293 accounts by the Consolidated Tax Office which improved its collection rate.
5. For Tax Years 2007-2011, \$43,647.73 was paid out of the Property Tax Overpayment Account for accounts with a Tax Levy balance of less than \$2.00. Property Taxes were paid on 34,551 accounts by the Consolidated Tax Office which improved its collection rate. In addition, the Consolidated Tax Office used this category to pay for operating expenses totaling \$253,801.04, which included construction cost of the new Tax Office, payments connected to a lawsuit judgment, payment of sales proceeds on a Tax Sale, and clearing posting errors to taxpayer's accounts.
6. Based on the information and data collected during our analysis, we have determined that the Annual Budget presented by the City Tax Assessor/Collector does not accurately reflect the true operating cost of the Consolidated Tax Office.

For a detailed explanation of each finding, please refer to the appropriate finding contained in the body of this report.

Please review this memorandum at your convenience. If you have any questions please feel free to contact me at extension #4402.

cc: Joyce A. Wilson, City Manager
Carmen Arrieta-Candelaria, Chief Financial Officer

Mayor

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FINDINGS

Finding: 1

\$225,000 Purchase Agreement

State of Texas Local Government Code, Title 8, Subtitle A, Chapter 252, Section 252.021 Competitive Requirements For Purchases state that *“before a municipality may enter into a contract that requires an expenditure of more than \$50,000 from one or more municipal funds, the municipality must comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals.”*

City of El Paso, Purchasing Manual dated January 2010; Section 4.0 Compliance states that *“It is the policy of the City of El Paso to conduct all contracting and procurement activities in accordance with applicable federal, state and local laws. Staff responsible for any aspect of procurement or contracting shall comply with the rules described in the aforementioned laws and aspire to the highest ethical standards and business practices.”*

City of El Paso, Purchasing Manual dated January 2010; Section 7.4 Purchases over \$50,000 of the Purchasing Manual states that *“Purchases for goods and services over \$50,000 are required by state law to be competitively solicited through a formal process unless there is an exception.” “There are two main methods that can be used to purchase goods and services at this level of dollar amount: Formal Solicitation and Purchasing Programs.”*

The City Tax Assessor/Collector circumvented State Procurement Laws and the City’s Purchasing Manual by entering into a Purchasing Agreement with Madison River Investments, LLC to pay for additional security equipment and furniture for the new Tax Office location. The Purchasing Agreement was executed without City Manager or City Council approval.

The Consolidated Tax Office issued check #030460 dated March 22, 2012 in the amount of \$225,000.00 payable to Madison River Investments, LLC as payment for the security equipment and furniture included in the Purchasing Agreement. Of the \$225,000.00 payment, \$150,000.00 was applied toward construction cost and security equipment that is mentioned in the Purchasing Agreement. In addition, the Purchasing Agreement allowed for an administrative fee (i.e. a markup) equal to 4% of the total costs to be added to the purchase price. The Deputy Tax Administrator had knowledge of this purchase as part of her duties as the Project Manager coordinating the Tax Office relocation.

Recommendation:

We recommend that Consolidated Tax Office obtain City Council’s approval to ratify the purchase of security equipment and associated construction cost made by the City Tax Assessor/Collector and Deputy Tax Administrator.

On June 5, 2012, City Council ratified approval of the expenses for the tenant improvements between the City of El Paso and Madison River Investments, LLC for the new Consolidated Tax Office.

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Finding: 2

\$75,000 Furniture Purchase

State of Texas Local Government Code, Title 8, Subtitle A, Chapter 252, Section 252.021 Competitive Requirements For Purchases state that “before a municipality may enter into a contract that requires an expenditure of more than \$50,000 from one or more municipal funds, the municipality must comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals.”

City of El Paso, Purchasing Manual dated January 2010; Section 4.0 Compliance states that “It is the policy of the City of El Paso to conduct all contracting and procurement activities in accordance with applicable federal, state and local laws. Staff responsible for any aspect of procurement or contracting shall comply with the rules described in the aforementioned laws and aspire to the highest ethical standards and business practices.”

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The City Tax Assessor/Collector circumvented State Procurement Laws and the City’s Purchasing Manual by entering into a Purchasing Agreement with Madison River Investments, LLC to pay for additional security equipment and furniture for the new Tax Office location. The agreement was entered into without City Management or City Council approval.

The Consolidated Tax Office made a payment of \$75,000.00 towards the purchase of furniture. The \$75,000.00 was included in the \$225,000.00 check issued to Madison River Investments, LLC on March 22, 2012 with Check #030460. In addition, the separate Purchasing Agreement allowed for an administrative fee (i.e. a markup) equal to 4% of the total costs to be added to the purchase price. The Deputy Tax Administrator had knowledge of this purchase as part of her duties as the Project Manager coordinating the Tax Office relocation.

Recommendation:

We recommend that Consolidated Tax Office obtain City Council’s approval to ratify the purchase of furniture made by the City Tax Assessor/Collector and Deputy Tax Administrator.

On June 5, 2012, City Council approved the acquisition for additional furniture and equipment from an approved vendor. By following the proper procurement procedures, the City of El Paso was able to save approximately \$30,000.00 for furniture and \$4000.00 for fiber in the purchase price.

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Finding: 3

Bankruptcy Cases Handled by the Tax Attorneys

A strong system of internal controls requires that only refunds for overpayment of tax levies should be paid from the Property Tax Overpayment Account. Payments for legal fees should be budgeted for and shown as an operating expense for the Consolidated Tax Office.

The current contract with the Tax Attorneys allows for the payment of legal fees to handle current year bankruptcies, the Consolidated Tax Office did not disclose to the Taxing Entities that legal expenses were being paid out of the Property Tax Overpayment Account. These legal expenses were also not included in the Annual Budget approved by City Council.

The Consolidated Tax Office concealed the payment of these legal expenses through bookkeeping entries in the Appraisal & Collection Technologies System. Payments to the Tax Attorneys for current year bankruptcy cases for the last three tax years are as follows:

Amounts Funded to Attorneys from the Overpayment Account	
Tax Year	
2009	\$124,230.68
2010	\$189,745.82
2011	\$314,539.00
Total	\$628,515.50

Recommendation:

All future payments to the Tax Attorneys for current year bankruptcies legal fees should be completed by following the City of El Paso's Accounts Payable Manual. The Consolidated Tax Office should immediately stop the practice of using the Property Tax Overpayment Account to pay legal fees to the Tax Attorneys.

Going forward all invoices from the Tax Attorneys should be referred to the City Attorney for review and approval. These invoices should be prepared with enough detail to document the actions taken by the Tax Attorneys in connection with representing the City of El Paso's Consolidated Tax Office. Any invoiced amount involving bankruptcy cases should be connected with a paid tax levy and fees as required by the current contract between the City of El Paso and the Tax Attorneys.

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Finding: 4

Payments on Accounts with Balances of Under \$10.00

Texas Tax Code, Section 31.02 Delinquency Date states “(a) Except as provided by Subsection (b) of this section and by Sections 31.03 and 31.04 of this code, taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed.”

There are no established policies that allow the City Tax Assessor/Collector to pay property taxes on taxpayer’s accounts with unpaid balances of under \$10.00.

The Consolidated Tax Office paid \$234,883.69 for Tax Years 2004 through 2011 on 123,293 accounts with balances of less than \$10.00 without authorization or approval from City Manager or City Council. The Consolidated Tax Office used funds from the Property Tax Overpayment Account to pay the outstanding balances. The following is a breakdown of the payments:

Tax Year	Amount	Accounts Paid
2004	\$53,820.55	Unavailable *
2005	\$46,547.49	Unavailable *
2006	\$23,448.46	58,430
2007	\$18,281.25	18,843
2008	\$19,316.67	17,978
2009	\$19,683.20	19,116
2010	\$26,536.54	4,329
2011	\$27,249.53	4,597
Total	\$234,883.69	123,293

* The Consolidated Tax Office could not provide the number of accounts for 2004-2005.

For Tax Year 2011, the Consolidated Tax Office paid 4,597 accounts totaling \$27,249.53 that had an outstanding balance of less than \$10.00. We reviewed 100 out of the 4,597 accounts with balances of less than \$10.00. A total of \$964.53 was paid on the 100 accounts.

Of the 100 accounts reviewed, we identified the following issues:

1. 88 of the 100 (88%) accounts reviewed had 100% of their 2011 Tax Levy paid by the Consolidated Tax Office. The total amount paid was \$848.16.
2. 67 of the 100 (67%) accounts reviewed were properties located in the Horizon City area. The total amount paid was \$646.83.
3. 4 of the 100 (4%) accounts had 100% of their Tax Levies paid by the Consolidated Tax Office and the property owners received a refund of their payment after they paid their taxes. The amount refunded to the property owners totaled \$40.91.

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Recommendation:

We recommend the Consolidated Tax Office immediately stop the practice of paying the property taxes on accounts with balances of under \$10.00. The Property Tax Overpayment Account should only be used to refund taxes to taxpayers or the Taxing Entities they serve.

The Consolidated Tax Office needs to notify the 34 Taxing Entities they serve and inform them of this past practice.

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Finding: 5

Payments on Accounts with Tax Levy Balances of Under \$2.00

Texas Tax Code Chapter 31.02 DELINQUENCY DATE states “(a) Except as provided by Subsection (b) of this section and by Sections 31.03 and 31.04 of this code, taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed.”

There are no established policies that allow the City Tax Assessor/Collector to pay property taxes on taxpayer’s accounts with unpaid balances of under \$2.00.

The Consolidated Tax Office (CTO) paid \$43,647.73 in Property Taxes, for Tax Years 2007 through 2011, on 34,551 accounts with tax levies of less than \$2.00 without authorization or approval from the City Manager or City Council. The Consolidated Tax Office used funds from the Property Tax Overpayment Account to pay the outstanding balances. The CTO also used the Property Tax Overpayment Account to pay for miscellaneous expenses and payments to cover erroneous payments in the amount of \$253,801.04.

Tax Year	Number of Accounts Paid	Amounts Paid by the CTO on Taxpayer Accounts	Expenses & Payments Paid	Totals Paid from the Overpayment Account
2007	5,682	\$8,500.19	\$3,407.30 ⁽¹⁾	\$11,907.49
2008	6,235	\$7,242.06	\$0.00 ⁽²⁾	\$7,242.06
2009	5,905	\$9,158.39	\$12,117.63 ⁽³⁾	\$21,276.02
2010	7,392	\$9,255.04	\$12,522.19 ⁽⁴⁾	\$21,777.23
2011	9,337	\$9,492.05	\$225,753.92 ⁽⁵⁾	\$235,245.97
Total	34,551	\$43,647.73	\$253,801.04	\$297,448.77

⁽¹⁾ Payments of \$890.05 and \$814.29 were to cover erroneous write offs and one payment of \$1,702.96 to cover and erroneous levy refund check.

⁽²⁾ No payments were recorded on the adjustment documentation.

⁽³⁾ A payment of \$9,727.48 was paid to cover an erroneous overpayment refunded to a taxpayer. There were three payments to cover erroneous levy refund checks of \$692.35, \$1,193.41 and \$453.79 and one payment for \$50.60 to cover erroneous overpayment write off due to a lockbox error.

⁽⁴⁾ Two payments, one of \$9,133.15 for attorney’s fees and one of \$3,389.04 for prejudgment interest for a Lawsuit Judgment that the Consolidated Tax Office was a party of. Neither the City Tax Assessor/Collector nor the Deputy Tax Administrator notified the City Attorney’s Office of the pending lawsuit. The City Attorney’s Office was unaware that Tax Attorneys were representing the City of El Paso in this legal matter. The current contract with the City of El Paso allows the Tax Attorneys to intervene and represent the City and the other Taxing Entities

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in tax collection suits and bankruptcies.

⁽⁵⁾ Payments included the payment of \$225,000.00 paid to Madison River Investments, LLC which is addressed in Finding #1 & #2. A second payment involved a disbursement of \$753.92 was made to the El Paso County Water Improvement District #1 for a error in the processing of sale proceeds involved on a piece of property sold in a Tax Sale.

Recommendation:

We recommend the Consolidated Tax Office immediately stop the practice of paying property taxes on accounts with a Tax Levy balance of under \$2.00 out of the Property Tax Overpayment Account. The Property Tax Overpayment Account should only be used to pay refunds of property taxes to taxpayers or to the Taxing Entities they serve.

The Consolidated Tax Office should also cease the practice of paying operating expenses and balancing transactions from the Property Tax Overpayment Account.

The Consolidated Tax Office needs to notify the 34 Taxing Entities they serve and inform them of this past practice.

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Finding: 6

Operational Budget

City of El Paso, Budget Policies, Section V Balanced Budget states *“The general fund, which is the main operating fund of the City, is required to annually have a balanced budget. Appropriations will equal revenues in the proposed City Manager’s budget submitted to Council for review and approval. Council will adopt a balanced budget by resolution.”*

“It is the policy of the City that the budget for each of its funds always be balanced in that the appropriations from each fund for the fiscal year not exceed the resources available to that fund for the year, including estimated revenues and any unreserved balance in the fund at the beginning of the year. This policy assures that the city does not spend beyond its means.”

The Consolidated Tax Office’s approved budgets do not reflect its true operating cost. The City Tax Assessor/Collector and Deputy Tax Administrator have attempted to conceal expenditures from City Management and the Taxing Entities they serve which keeps the per parcel collection rate at a minimum. Funds have not been appropriated or disclosed for various operating expenses that the Consolidated Tax Office incurred on a yearly basis. Payments to Tax Attorneys, tax payments on accounts with balances of under \$10.00, and tax payments on accounts with Tax Levy balances of under \$2.00 have been made for several years without the approval of City Management, City Council, or Taxing Entities.

For example, for Fiscal Year 2012, the Consolidated Tax Office’s Budget does not reflect the costs of the construction and relocation of the new Tax Office. In addition, payments to the Tax Attorneys, payments of balances of under \$10.00, and payments of Tax Levies of under \$2.00 were not included in the Annual Budget.

For Fiscal Years 2011, 2010 and 2009, we identified the same recurring expenditures that were not budgeted or disclosed. Specifically payments to the Tax Attorneys, payments of balances of under \$10.00, and payments of Tax Levies of under \$2.00.

Fiscal Year	Category	Amount
2012	Construction & Relocation of the Tax Office	\$478,855.09
	Furniture	\$121,911.20
	Rent	\$40,440.56
	Tax Attorneys	No expenditures made
	Payment of Balances of Under \$10.00	No expenditures made
	Payment of Balances of Under \$2.00	No expenditures made

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Fiscal Year		Category	Amount
2011		Tax Attorneys	\$314,539.00
		Payment of Balances of Under \$10.00	\$27,249.53
		Payment of Balances of Under \$2.00	\$9,492.05
2010		Tax Attorneys	\$189,745.82
		Payment of Balances of Under \$10.00	\$26,526.54
		Payment of Balances of Under \$2.00	\$9,255.04
2009		Tax Attorneys	\$124,230.68
		Payment of Balances of Under \$10.00	\$19,683.20
		Payment of Balances of Under \$2.00	\$9,158.39

Recommendation:

We recommend the Consolidated Tax Office prepare an accurate Annual Budget that includes estimates of recurring expenses and reflects all expected expenditures. In addition, the Consolidated Tax Office should continue to have its Annual Budget approved by City Council.

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CONCLUSION

Based on the information obtained from the Consolidated Tax Office's records, the City Tax Assessor/Collector and Deputy Tax Administrator have mismanaged **\$1,160,847.96** from the Property Tax Overpayment Account. The monies deposited in the Property Tax Overpayment Account are to be held in trust by the Consolidated Tax Office, a department of the City of El Paso. A "Fiduciary Relationship" exists between the Consolidated Tax Office and the 34 Taxing Entities which it serves. The City Tax Assessor/Collector and Deputy Tax Administrator have the responsibility to safeguard the Property Tax Overpayment Account funds that are collected on an annual basis.

The unclaimed Property Tax Overpayments deposited in the Property Tax Overpayment Account are required under Section 31.11 of the Texas Property Tax Code to be held for a 3 year period before they are transferred to the Taxing Entities on a pro-rata basis. The City Tax Assessor/Collector and Deputy Tax Administrator used funds in the Property Tax Overpayment Account to pay for operational expenses in connection with the Consolidated Tax Office. The Internal Audit Office was able to identify the following expenditures:

1. **\$150,000.00** was paid to Madison River Investments, LLC in payment for the construction costs and security equipment of the Wells Fargo Building location. The payment was made with Check #030460 dated March 22, 2012 in the amount of \$225,000.00 (\$150,000.00 was allocated to the construction cost and security system). The construction costs totaled approximately \$478,855.09 with a construction allowance of \$199,425.00 included in the lease with Madison River Investments, LLC. The construction costs included the construction of the office, installation of Fiber Optics cabling, computer cabling, telephone system, Security System, and movers. The Security System purchase was solicited from Madison River Investments, LLC with a separate Purchasing Agreement dated March 20, 2012, signed March 22, 2012, and executed by the City Tax Assessor/Collector. The Purchasing Agreement specified the purchase of the Security System and furniture. The City Tax Assessor/Collector authorized a 4% administrative fee to be added to the purchase price of both items. The Purchasing Agreement does not appear to be valid because it was not approved by City Council, as required. The City Tax Assessor/Collector and Deputy Tax Administrator failed to follow Texas Local Government Code, Title 8, Subtitle A, Chapter 252, Section 252.021, which required local governments to obtain competitive bids when expending more than \$50,000.00.
2. **\$75,000** was paid to Madison River Investments, LLC for the purchase of new office furniture. The payment was included in Check #030460 dated March 22, 2012 in the amount of \$225,000.00 (\$75,000.00 was allocated to the furniture purchase). The furniture purchase was solicited from Madison River Investments, LLC with a separate Purchasing Agreement dated March 20, 2012, signed March 22, 2012 and executed by the City Tax Assessor/Collector. The Purchasing Agreement specified the purchase of the Security System and furniture. The City Tax Assessor Collector authorized a 4% administrative fee to be added to the purchase price of both items. The Purchasing

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Agreement does not appear to be valid because it was not approved by City Council, as required. The City Tax Assessor/Collector and Deputy Tax Administrator failed to follow Texas Local Government Code, Title 8, Subtitle A, Chapter 252, Section 252.021, which required local governments to obtain competitive bids when expending more than \$50,000.00.

3. **\$628,515.50** was paid to the law firm of Delgado, Acosta, Spencer, Linebarger, and Perez to handle current year bankruptcies for the Consolidated Tax Office. These expenditures occurred for Tax Years 2009 to 2011. The expenditures were paid without following current City of El Paso procedures, specifically Accounts Payable Manual.
4. **\$234,883.69** was paid on Taxpayer's accounts with a balance of under \$10.00. A total of 123,293 accounts were paid for Tax Years 2005-2011. These payments were processed without approval from the City Manager, City Council, or the Taxing Entities that are served by the Consolidated Tax Office.
5. **\$43,647.73** was paid on Taxpayer's accounts with a Tax Levy balance of under \$2.00. A total of 34,551 accounts were paid for Tax Years 2007-2011. These payments were processed without approval from the City Manager, City Council, or the Taxing Entities that are served by the Consolidated Tax Office.

\$28,801.04 was paid for various operating expenses and payments from the Property Tax Overpayment Account.

- Payments of \$890.05 and \$814.29 were to cover erroneous write offs and one payment of \$1,702.96 to cover and erroneous levy refund check.
 - A payment of \$9,727.48 was paid to cover an erroneous overpayment refunded to a taxpayer. There were three payments to cover erroneous levy refund checks of \$692.35, \$1,193.41 and \$453.79 and one payment for \$50.60 to cover erroneous overpayment write off due to a lockbox error.
 - A payment of \$12,522.19 was paid to a taxpayer as a result of a Lawsuit Judgment of which the Consolidated Tax Office was a party. The payment included \$9,133.15 in attorney's fees and \$3,389.04 for prejudgment interest. The City Attorney's Office was unaware of the lawsuit and its judgment.
 - A payment of \$753.92 was paid to the El Paso County Water Improvement District #1 in order to compensate them for a Tax Sale of a property under their jurisdiction. In addition a payment of \$225,000.00 was paid to Madison River Investments, LLC for a Security System and furniture. The details are documented in Findings #1 & #2.
6. The Consolidated Tax Office's Annual Operating Budgets do not reflect its true operating expenses. For Fiscal Years 2009-2012, recurring costs were not included, budgeted or estimated.

The City Tax Assessor/Collector and Deputy Tax Administrator in the administration of the Consolidated Tax Office have failed to meet their fiduciary duty of safeguarding the property

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taxes collected on behalf of the 34 Taxing Entities under contract with the Consolidated Tax Office. Mismanagement of the monies contained in the Property Tax Overpayment Account is apparent in our analysis. Based on our analysis, we recommend that the findings identified in this report be referred to the El Paso Police Department – Special Investigation Group.